

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 51 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

GITA GINNING & OIL INDUSTRIES

Appearance:

MR B BNaik for MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether the appellate Tribunal is right in law and on facts in holding that if the unpaid liability is discharged before filing of return under section 139(1), disallowance cannot be made invoking the provisions of section 43-B ?"

2. The above question is squarely covered by the decision of this Court in CIT vs. M/s. Chandulal Venichand and others reported in 209 ITR, 7 which view was approved by the Supreme Court in Allied Motors (P) Ltd. vs. CIT, reported in 224 ITR, 677.

3. Following the decision of the Supreme Court in Allied Motors (P) Ltd. (Supra), and the ratio of this Court in M/s. Chandulal Venichand (supra), we are of the view that the Tribunal was right in holding that if unpaid sales tax liability is paid before the due date for filing of the return under section 139(1) of the Income tax Act, no addition could be made invoking the provisions of section 43B of the Act. The question referred to us is therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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